EXHIBIT 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW RAYMOND,
Plaintiff,

-vs- 18-CV-01467

TROY MITCHELL, LIEUTENANT AT AUBURN CORRECTIONAL FACILITY; CHARLES THOMAS, CORRECTION OFFICER AT AUBURN CORRECTIONAL FACILITY; THOMAS HARTE, SERGEANT AT AUBURN CORRECTIONAL FACILITY; THOMAS PHILLIPS, CORRECTION OFFICER AT AUBURN CORRECTIONAL FACILITY; THOMAS GIANCOLA, CORRECTION OFFICER AT AUBURN CORRECTIONAL FACILITY; HAROLD D. GRAHAM, FORMER SUPERINTENDANT OF AUBURN CORRECTIONAL FACILITY; BRIAN BAUERSFELD, CORRECTIONAL HEARING OFFICER OF AUBURN CORRECTIONAL FACILITY; BRIAN O'HORA, CORRECTION OFFICER AT AUBURN CORRECTIONAL FACILITY; AIMEE HOPPINS, R.N.; DR. DEBORAH GEER; AND "JOHN DOE", CORRECTION OFFICER AT AUBURN CORRECTIONAL FACILITY,
Defendants.

REMOTE EXAMINATION BEFORE TRIAL OF

JONATHAN M. VAPNEK, MD

Friday, March 11, 2022

2:01 p.m. - 3:54 p.m.

pursuant to notice

REPORTED BY:

Carrie A. Fisher, Notary Public

APPEARING REMOTELY FROM ERIE COUNTY, NEW YORK

REMOTE APPEARANCES

APPEARING FOR THE PLAINTIFF:

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APPEARING FOR THE DEFENDANTS:

LIPSITZ GREEN SCIME CAMBRIA LLP
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ALSO PRESENT (OBSERVING):

BONNIE LEVY, ESQ.
NYS Attorney General's Office

EMMA FREEMAN, ESQ.
Emery Celli Brinckerhoff Abady Ward & Maazel LLP

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EXHIBITS

REPORTED REMOTELY FROM ERIE COUNTY, NEW YORK

THE REPORTER: Good morning. My name is Carrie Fisher. I am the stenographic court reporter. I am not physically present with the witness and will be reporting this deposition remotely.

Will the attorneys participating in this deposition acknowledge that, in lieu of an oath administered in person, I will administer the oath remotely and further consent to waive any objections to this manner of reporting.

Please indicate your agreement by stating your name, who you represent and your agreement on the record, starting with the noticing attorney.

MR. MACKEY: Patrick Mackey on behalf of the defendants Mitchell, Thomas, Harte, Phillips, Giancola, Graham, and Geer, and I consent.

MS. ROSENFELD: Katie Rosenfeld for plaintiff, I consent.

J O N A T H A N M. V A P N E K, M D,
229 East 79th Street, New York, New York 10075, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. MACKEY:

Q. Good afternoon, Dr. Vapnek. My name is Patrick Mackey. I am one of the attorneys representing the defendants in this case. Thank you for your time and thanks for appearing today for this particular deposition.

I will have a series of questions for you, and before we get started though I just want to kind of lay some ground rules so it goes as smoothly as possible. One is just kind of wait until I finish my question before jumping in with your answer. If we start talking over each other, it's difficult for the stenographer so if you could just wait until I am done with my question. And I will do the same, I will wait until you're done with your answer before I go on to my next

question.

We do need verbal answers. A shake or a nod of the head isn't recordable so everything needs to be verbal.

Just let me know if you don't understand a question. I'd like you to be answering questions you understand. If there is a question you're just not quite understanding what I am asking you, that's fine, just let me know. I will ask it a different way or maybe break it down into smaller questions.

There may be objections by the attorney, your attorney, during the deposition which is normal. I just ask that you answer the question once the objection has been placed on the record.

And if you do need a break at any time, just let me know. It's no problems taking a short break for whatever reason you may need it. The only thing I ask is if there is a question pending that the question be answered before we take that break. All right?

A. All right.

Q. Okay. So let's get started.

Dr. Vapnek, are you licensed to practice law in the state of New York?

A. I am licensed to practice medicine but not law yet.

Q. Did I say law?

A. You did.

Q. Are you licensed to practice medicine in the state of New York?

A. I am.

Q. Okay. When did you obtain that license?

A. 1993 when I moved to New York.

Q. Okay. Where did you move from?

A. California.

Q. Were you practicing medicine in California when you moved to New York?

A. No, I had done my residency and my fellowship there and I keep my license current just in case.

Q. Okay. Are you practice -- currently are you licensed to practice medicine in California?

A. I am.

Q. Okay. Any other states that you're licensed

to practice medicine?
A. No.
Q. Okay. So just New York and California?
A. Correct.
Q. Okay. Do you have any board certifications?
A. I do.
Q. And what are those in?
A. American Board of Urology. My initial certification was 1995, and I have recertified twice so I am good to go until 2025.
Q. And where are you currently employed?
A. I am self-employed in Manhattan.
Q. So you have your own practice?
A. I do.
Q. And what's the name of the practice?
A. Jonathan Vapnek, MD, PC.
Q. Before working at your own practice, did you work elsewhere in the medical field?
A. I did. I was full-time staff at Mount Sinai Medical Center from 1993 until November of 2002, at which point I decided to go out into solo private practice.
Q. Okay. So Jonathan Vapnek, MD, PC, that began

in 2002?
A. Correct.
Q. Have you ever provided medical services in a correctional facility?
A. No.
Q. Okay. And do you did you review any documents in preparation for today's deposition?
A. Yes.
Q. What documents did you review?
A. Well, I have obviously all the records that I reviewed to formulate my December 15th letter. I looked back at some of my notes, occasionally looking at some of the source material.
Q. Okay. Anything else? Did you review any other reports prepared by experts related to this case in preparation for this deposition?
A. Well, there were the plaintiff's expert neurologist which is Sherry Leitch and then the two defense experts John Valvo who is the urologist and Robert Knapp who is the neurologist.
Q. Okay. And you took a look at those before for

today's deposition?
A. Yes.
Q. Okay. Anything else, any other documents that you reviewed?
A. No.
Q. The plaintiff in this case, Matthew Raymond, has he ever been a patient of yours?
A. No.
Q. Do you know if any members of Mr. Raymond's family has ever -- have ever been a patient of yours?
A. Not that I'm aware of.
Q. Okay. Before providing Mr. Raymond with expert witness services in this case, did you know Mr. Raymond?
A. No.
Q. Okay. And before providing Mr. Raymond with expert witness services in this particular lawsuit, did you know any members of Mr. Raymond's family?
A. Not that I'm aware of, no.
Q. Other than this particular lawsuit, have you been hired in the past to provide expert

witness services in lawsuits?
A. Yes.
Q. Okay. Approximately how many times in the past?
A. What -- I mean, in terms of number of cases I have reviewed or number of times I have testified?
Q. Okay. We can break it down.

Approximately how many times have you testified at trial as an expert witness?
A. I think I have testified at trial about 65 times.
Q. Okay. And if you can approximate, how many times have you been hired to provide expert witness services in a lawsuit, so not necessarily just provide trial testimony but to review medical records, prepare expert reports, things of that nature?
A. I should probably figure this out but it's -- I mean, over the last 20 years it's got to be, you know, 600 to a thousand cases. I do a lot of -- a lot of reviews that never come to deposition, a lot of reviews that never go to

trial so there is a lot of behind the scenes stuff.

Q. Understood. When you -- during your history of providing expert witness services in lawsuits, is that always in the field of urology?

A. Yes.

Q. And I think you mentioned it's been about 20 years that you have been providing expert witness services. During that 20-year period, have you provided expert witness services to defendants in lawsuits?

A. Yeah, most of -- I would say probably 65 -- you know, two-thirds of my work is defense work, primarily in the New York area, and then there is plaintiffs work in malpractice cases and then there are the damages cases or workers' comp and such.

Q. Okay. So would you agree that you do provide expert witness services both sometimes on behalf of defendants and sometimes on behalf of plaintiffs?

A. That's correct.

Q. The law firm that hired you in this particular case, Emery Celli Brinckerhoff Abady Ward & Maazel, have they hired you in the past for expert witness services?
A. No.
Q. Okay. So this is the first time?
A. Yes.
Q. And the name of the law firm I belong to and it's based in Buffalo, New York, is Lipsitz Green Scime Cambria. Do you know if you have ever been hired by that firm to provide expert witness services?
A. I don't believe so.
Q. Now, I think you mentioned a little earlier before that there have been occasions that you have provided deposition testimony as an expert. Approximately how many times have you done that?
A. I think it's in the neighborhood of 75 or 80.
Q. Okay. And have you authored any publications?
A. Yes.
Q. Okay. What was your most recent publication that you authored?

A. That's a good -- I'd have to go back and look at my CV. I don't do a whole lot of writing these days, but probably about four or five years ago I think one of my former residents and I published a book chapter but I'd have to go back and look at the CV.
Q. Okay. You just don't recall the specifics, what publication that was?
A. That's right.
Q. Okay. Approximately how many articles or other publications have you issued?
A. I think it's probably 30 or 40.
Q. Do you know if any of those were related to the topic of neurogenic bladder?
A. Since my subspecialty area of expertise is neurourology and voiding dysfunction, a lot of my presentations and a fair number of articles are generally about bladder control.
Q. Okay. So you're familiar with --
A. I don't know what that was, but we're still here.
Q. Okay. You hear me fine?
A. Yep.

Q. Okay. Now you mentioned that -- strike that.

Now, in your private practice do you have patients that suffer from neurogenic bladder?

A. Yes.

Q. Okay. Now, are you able to provide an approximate percentage of how many of your patients suffer that particular condition?

A. I can't give you an exact number, but certainly since that, again, is my subspecialty area, while I do general urology and see kidney stones and prostate cancer and such, there is certainly a larger number of those with bladder control problems of which neurogenic bladder is certainly a large portion of that. So it's certainly in the neighborhood of, I mean, overall couple hundred patients. You know, I may not see them more than once a year but there is plenty.

Q. Understood. Is it over 50 percent of your patients are patients that suffer from bladder issues?

A. No.
Q. Okay. So it's under 50 percent you think?
A. Yes.
Q. Now you mentioned earlier you have appeared approximately 65 times prior -- 65 times at a trial as a witness. Were all of those appearances as -- were you appearing as an expert witness?
A. Yes.
Q. Okay. And have you ever been not qualified by a court or a judge during a trial?
A. Not that I'm aware of, no.
Q. Do you have any felony convictions?
A. Not that I'm aware of.
Q. Do you have any misdemeanor convictions?
A. No.
Q. Have you ever been disciplined for your actions taken as a medical doctor?
A. No.
Q. Have you ever been sued for malpractice?
A. Yes.
Q. Okay. How many times, do you know?
A. Five times.

Q. And if you know, what were the results of those five lawsuits?
A. I think one of them may still be pending. I haven't heard anything for a couple of years. It seems pretty silly, but I don't honestly know. The other four were either dropped or settled on the behalf of others, so no judgments or settlements for myself.
Q. Okay. Well, that kind of goes along with my next question. Do you know if any of those five lawsuits of liability was ever found against you?
A. Right. There were none.
Q. Okay. And all five of these malpractice lawsuits, were these related to your services in the field of urology?
A. Yes.
Q. And were all five of these in New York?
A. They were.
Q. Okay. Do you know if they were state court matters or federal court matters?
A. I would presume they were state court as they were, you know, New York City based.

Q. Okay. And the one lawsuit that's still pending, how old is that lawsuit do you know? Do you remember when it was filed?

A. I mean, I got deposed probably three years ago and I think there was a motion to dismiss it but I have literally not heard anything. I really don't know.

Q. Okay. Have you ever been charged with ethical violations in the medical field?

A. No.

Q. Now, the lawsuit that we're discussing today was brought by the plaintiff whose name is Matthew Raymond. And, as you know, you provided an expert report on Mr. Raymond's behalf. Did you ever meet to examine Mr. Raymond?

A. No.

Q. Have you ever had any discussions with Mr. Raymond?

A. No.

Q. Have you ever had any discussions with any members of his family?

A. No.

Q. Is it accurate to say that the report you prepared for Mr. Raymond was just based upon your review of medical records related to the care that had been provided to Mr. Raymond?
A. Sure.
Q. Now, during your review of records related -- or records in order to prepare your expert report, did you notice at any time that Mr. Raymond had been diagnosed as being or having depression?
A. I don't recall specifically. I was concentrating more on the urological matters.
Q. Okay. So you just don't remember?
A. Correct.
Q. Upon your review of the records, did you come across information related to the fact that Mr. Raymond back in 2012 suffered a head injury when he was hit by a beam at a work site?
A. Yes.
Q. Okay. So you saw that in the records?
A. Yes.
Q. And upon your review of the records, did you

notice or did you see that in 2007 Mr. Raymond injured his spine in a medical -- in a motorcycle accident?

A. I think that was something I read about, but I don't think -- I don't think records extended that far back that I saw.

Q. Okay. Yeah, in a little bit I will go over the records that you went through. In preparing your report, your report, your expert report, did you give any consideration about the head injury that Mr. Raymond suffered in 2012?

A. Sure.

MS. ROSENFELD: Objection to the form.

Q. Okay. And what type of consideration did you give it?

A. I think that any time one is doing a review and looking for causation one has to fairly take into account all of the potential issues that might impact.

Q. Okay. And do you feel at all that that particular injury, the injury in 2012 from the -- from being hit in the head with the

beam, is that a factor at all in Mr. Raymond having a neurogenic condition of a neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. I think that it is a pre-existing condition, but there was no evidence of any voiding dysfunction prior to the incident of September 14th of 2016. So it may have perhaps predisposed him to a higher degree of injury from subsequent head injuries. So in that way I suppose it's relevant, but from what I can tell there was no issue -- no urological issue from that specifically.

Q. Okay. Just so I understand, is it your contention then that the injury that was suffered in 2012 may have -- may have created or did create a pre-existing condition that may have caused later on Mr. Raymond to suffer this neurogenic bladder?

MS. ROSENFELD: Objection. Misstates testimony.

A. I think that what I meant to say, maybe not so artfully, was that having one head injury may

predispose one to be more susceptible to a second head injury, but that's speaking as a urologist as opposed to a neurologist.

Q. Okay. And the injury to the spine from the motorcycle accident in 2007, did you take that into consideration at all when preparing your expert report?

A. Yes.

Q. Okay. And how did you -- what consideration did you give it?

A. Again, knowing that that was a pre-existing condition that had not for nine years caused any demonstrable deficit in voiding function.

Q. Okay. And do you feel at all that that injury to the spine, to any degree, has it caused a neurogenic bladder that Mr. Raymond currently suffers?

MS. ROSENFELD: Objection to the form.

A. Yeah, highly unlikely.

Q. And why do you think it's unlikely?

A. Again, the imaging was unimpressive and for that long number -- nearly a decade there were no urological issues.

Q. Now upon reading the records that were provided to you, did you notice that there is a record of Mr. Raymond suffering seizures?
A. Yes.
Q. And those seizures appear to have started once -- when he was hit with the beam in the head -- in the head with the beam in 2012, correct?
MS. ROSENFELD: Objection.
A. Right.
Q. Now I know you're not a neurologist but, I mean, what is your understanding of the causes of the seizure?
A. I mean, when I -- I have seen patients with seizures over the years and certainly a traumatic brain injury is one reason and idiopathic or birth trauma is another one. I think from what I have seen in many cases there is no visible evidence on imaging, but there is evidence on EEG or clinically that there is an injury.
Q. And what do you mean by "there is no visible evidence"?

A. CAT scans often are negative and MRIs are negative. So we certainly see -- you know, and I think that's true in all aspects of medicine that imaging studies are helpful but they are limited and very often are negative even when someone does have clinical symptoms.

Q. Okay. So just so I understand, are you saying that a person may suffer from some seizures but there won't be any indications of that condition if they -- if you took an MRI or a CT scan of their brain?

A. Right. That's my understanding, yes.

Q. Now you mentioned that you have patients that have seizures. Do any of your patients that have seizures, do any of them have bladder retention issues?

A. I have not seen any in my practice.

Q. Okay. Have you ever encountered any patients or any -- well, let me strike that.

Have you ever come across a situation where seizures have been ruled as a cause of a neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. I have not.
Q. Have you read any publications or articles about neurogenic bladder being caused by long-standing seizures being suffered by a person?
A. No, but I can say certainly those with extreme head injuries or strokes or other major space occupying lesions causing seizures, something like that, would -- it would not be unexpected to have bladder dysfunction in those situations.
Q. Okay. Now what -- what physical injuries did Mr. Raymond sustain which caused him to suffer a neurogenic bladder?
A. My understanding is that after the incident he had a series of bruises that were noted. The imaging studies did not show any acute fractures or bleeds, but from what I understand there was evidence that there was physical trauma.
Q. Okay. Are you referring to the physical trauma of September 14th of 2016?
A. Yes.

Q. Okay. So upon your review of the records that were provided to you, have you ever come across any information which provides that Mr. Raymond injured his spine during that alleged assault?

A. What I have found certainly, and depending on who is writing the history and which hospital one goes to, there certainly were plenty of notes eluding to a spinal cord injury. Whether that was completely accurate or whether that was just interpretation by those particular physicians, it certainly shows up in the record on numerous occasions.

Q. Have you seen any imaging, MRI, x-ray, or CT scan showing Mr. -- showing that Mr. Raymond suffered a fractured spine?

A. No. And as I said earlier, there is certainly plenty of those -- I mean, there are patients out there who have a very incomplete spinal cord injury where there is no evidence on imaging.

Q. Okay. And what do you mean by "incomplete"?

A. Well, someone -- I mean, obviously these cases

are obvious, you know, somebody is injured: a car accident, they're wheelchair bound and they have spinal fractures and they have a spinal cord with a lot of hemorrhage and edema and all the rest of it. That's sort of the one where it's obvious. And then there's a lot cases where there is -- it's much, much more subtle and the imaging studies themselves may not show obvious injury.

Q. Okay. Do you feel that that's the case with Mr. Raymond, that he suffered injuries to his spine but it just cannot be identified on any type of imaging?

A. I don't think that's a major factor here, no.

Q. Okay. Have you -- upon your review of the records, have you seen any imaging of his brain which identifies the injury which caused his neurogenic bladder?

A. No.

Q. And have you reviewed any type of imaging of Mr. Raymond's neck which identifies an injury which caused his neurogenic bladder?

A. No.

Q. Have you viewed any type of imaging which identifies the injury that caused Mr. Raymond's neurogenic bladder?
A. No.
Q. And do you believe that Mr. Raymond suffers from a neurogenic bladder?
A. Yes.
Q. Okay. What is your opinion of the injury that has caused his neurogenic bladder?
A. I think most likely it is his traumatic brain injury that led to the pelvic pain and inability to urinate, and consequently the need for indwelling catheter and then eventually augmentation cystoplasty with catheterizable channel. And, again, that's not -- that's based on the fact that he really had no urological complaints whatsoever before the injury and after the injury he developed marked voiding dysfunction associated with the pelvic pain.
Q. Okay. What -- and you mentioned the traumatic brain injury. What injury are you referring to?

A. So he has -- according to the neurologists, he does have evidence of cognitive dysfunction and other -- other problems related to his brain function and those -- those issues are most likely related and explain why he has this other issue with inability to urinate on his own.

Q. Okay. But when you refer to the injury, what event are you referring to to cause that injury?

A. Well, the September 14th of 2016.

Q. Now, the defendants in this case, the corrections officers in this case, deny that there was any physical assault of Mr. Raymond on September 14th of 2016. If that was the case, is there another explanation for Mr. Raymond's neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. I mean, I don't -- from everything I have read, it appears that there was an assault. I suppose I guess somebody could assault him or herself. I don't know how that would happen, but some sort of trauma did occur and

following that trauma he ended up with a serious bladder problem.

Q. So it's possible that there could have been other trauma to Mr. Raymond's brain other than the alleged assault of 09/14/16 that caused the neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. I mean, again, that would be conjecture, but I suppose something else could have happened that we don't know about.

Q. Okay. When you were reviewing the records that were provided to you, did you see that the day before on September 13th of 2016 that Mr. Raymond suffered a seizure in his cell and because of the seizure suffered a fall?

A. Yes.

Q. Okay. Could that fall have been the cause of the damage to his brain?

MS. ROSENFELD: Objection to the form.

A. I don't -- I don't know enough about how much of a fall there was. I don't -- from what I saw in the records, it wasn't anything severe at the time.

Q. Okay. If that fall resulted in Mr. Raymond hitting his head to the floor, could that have caused a brain injury resulting in a neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. I mean, hypothetically, it's certainly possible.

Q. Did you review any of the records related to the -- his visit to the hospital on September 13th because of that seizure and fall?

A. Yes.

Q. And did you notice that there was reference to him -- to Mr. Raymond injuring his neck during that fall?

A. I don't -- I don't recall the specific note, but I believe that he was evaluated and was sent back.

Q. And when you say "sent back," you mean back to the correctional facility?

A. Right. I mean, they decided that there was -- that he didn't require hospital admission.

Q. I am going to be showing you some exhibits on the screen for you to take a look at.

Obviously I will do that one by one. The main document I do want to review with you is your report which I have marked as Exhibit 1, so let me put that up on the screen for you. Give me one moment, please.

Dr. Vapnek, do you see the document on the screen?

A. Yes.

Q. Okay. And if you see at the bottom it's marked as Exhibit 1. So this is your report of December 15th, 2021, correct?

A. Yes.

Q. Okay. Now, on the first page which we are looking at right now, it looks like that's a list of the records you reviewed; is that correct?

A. Yes.

Q. Okay. And did you review all of these records in preparation of your report?

A. Yes.

Q. Now it looks like the earliest -- the earliest record you looked at was outpatient records from Upstate University Hospital starting

January 19th, 2017. Do you see the portion that I highlighted?

A. Yes.

Q. Okay. Of the records that you listed, that's the earliest date. Do you know, did you review any records that were dated prior to January 19th of 2017?

A. I had -- I know I had seen that emergency room visit, and I believe I had seen some earlier records as well. I don't know, I might have missed them in this bullet list.

Q. Okay. When you say emergency room records, do you remember what time period that was?

A. I think that was at the -- I think that was the September of 2016.

Q. Okay. So was that the emergency records immediately after the alleged assault of September 14th of 2016?

A. Right.

Q. Now -- I am sorry, go ahead.

A. No, I am saying it's possible it was embedded in some of the other records. The records were rather voluminous, so I wouldn't be

surprised if they were contained within one of the other ones and I forgot to tease it out.

Q. Okay. I understand. Now looking at this list, I also don't see, or at least I don't think I see, any records identified or you identifying any records, medical records, from Auburn Correctional Facility, any Department of Corrections records. Do you know if you did review records that were provided or prepared by medical staff at the Auburn Correctional Facility?

A. I do believe that I saw some of those as well. It may not have been all of them and, again, I don't know why it didn't make it into this list.

Q. Okay. And if you recall, what was the time period of those records, the records from Auburn Correctional Facility?

A. You know, I just don't recall. I believe that what I ended up seeing was late 2016 up through the first visit to Upstate in January of '17, so I think it was just that four-month period from September of 2016.

Q. Okay. So let's go through your report. I do have some questions from the report that you prepared.

Scrolling to the second page of your report, right on the top you wrote that Mr. -- and I will just highlight these two sentences. That Mr. Raymond was assaulted by a New York State corrections officer on September 14th, 2016, and you wrote, "sustaining blows to his neck, head, face, chest, and genital region using closed fist and a baton." Did I read that correctly?

A. Yes.

Q. Where did you get that information from to include in your report?

A. I believe I got that from having read the report of Dr. Leitch.

Q. Okay. And the next paragraph, I will highlight that portion, you wrote, "shortly after that incident, he developed difficulty urinating." Where did you get that information from?

A. So I believe that came from the corrections

records.

Q. The medical records from the correctional facility?

A. I believe so.

Q. Now later in that paragraph it mentions that during Mr. Raymond's visit to Upstate University Hospital on January 19th of 2017 he received a Foley catheter. Do you see that?

A. Yes.

Q. Okay. Now, Foley catheter is a type of catheter which is installed directly into the urethra, correct?

A. Yes.

Q. Okay. Now, it mentions as soon as the catheter was placed there was immediate relief of pain. Is that common when a catheter is inserted?

A. Yes.

Q. Okay. What is happening in the body that there is an immediate relief of pain?

A. The bladder has receptors that sense pressure generally. So a bladder that gets overdistended is generally quite painful, and

once the bladder is decompressed the pressure is relieved and the pain improves.

Q. Okay. So the pain is somewhat related to the actual fact that the bladder is at a very full state?

A. Absolutely, yeah.

Q. Okay. Then the next paragraph makes reference to five days later Mr. Raymond was seen by Urologist Timothy Byler, MD, at Upstate University Hospital. Are you referring to five days after January 19th of 2017?

A. Yes.

Q. And later on in that paragraph, and I will highlight it, "Dr. Byler felt that Mr. Raymond's difficulty urinating was likely secondary to a traumatic urethral stricture." Do you see that?

A. Yes.

Q. So how would you -- how would you describe a urethral stricture?

A. Urethral stricture is scar tissue that forms in the urethra, either from trauma or from an infection, and is certainly one of the causes

of urinary retention.

Q. Okay. Now, eventually upon reviewing records from later dates it was determined that Mr. Raymond did not or was not suffering a urethral stricture, correct?

A. Right.

Q. Okay. So Dr. Byler's, I guess, feeling at that point that it could be a traumatic urethral stricture, it ended up being disproven, correct?

A. Right.

Q. Okay. Now, at that point the record that was prepared on that date, which was five days after January 19th of 2017, to your recollection or if you have the documents in front of you, was there any reference to Mr. Raymond possibly suffering a neurogenic bladder?

A. I don't remember whether he established a full differential diagnosis or whether he just went with his number one possibility, but that's -- we can certainly go back and look at the original documents, but I think his

interpretation at the time was certainly a reasonable -- you know, was a reasonable diagnosis based on what he knew at the time.

Q. Okay. So at that time it appears that Dr. Byler was feeling that Mr. Raymond was suffering a stricture rather than a neurogenic bladder, correct?

MS. ROSENFELD: Objection.

A. That's right.

Q. I am sorry, what was your answer?

A. Yeah, that's what his -- again, that was his number one choice of potential diagnoses.

Q. Okay. The next paragraph, and I will just highlight this portion, references that on March 7th, 2017, Mr. Raymond underwent a cystoscopy and a voiding -- and I don't know if I am going to say this word correctly -- cystourethrogram.

A. 90 percent.

Q. I am sorry?

A. You get 90 percent right.

Q. Thank you.

Let's take those individually. What

exactly is a cystoscopy?

A. So a cystoscopy is putting a scope through the urethra into the bladder looking for any abnormalities of the lining of the bladder and the lining of the urethra, and the voiding cystourethrogram is an x-ray study in which one puts contrast material into the bladder, again, to look at the configuration of the bladder. And both of those tests were done sort of sequentially and showed that there was no evidence of a stricture.

Q. Okay. So it looked like as of March 7th of 2017, upon those two tests being done on Mr. Raymond, there was a determination that there was no -- he was not suffering a urethral stricture; is that correct?

A. That's right.

Q. So roughly speaking, it took about two months from the time Mr. Raymond was brought to the hospital in January and then until March of 2017 to make -- to rule out a possible stricture, correct?

A. Fair enough, yes.

Q. Now, if Mr. Raymond was suffering a neurogenic bladder instead of a urethral stricture at that time, would that two-month delay cause problems or cause his neurogenic bladder to worsen?

A. No.

Q. Okay. So once he had the neurogenic bladder, is it fair to say it couldn't get worse?

A. I think, you know, sometimes the behavior of neurogenic bladders is difficult to predict, but having sort of missed the diagnosis on the first round and establishing it in the second round I don't think was -- I don't think that really made a difference one way or the other.

Q. So if the alleged assault happened in September of 2016 and he didn't visit the hospital, the Upstate University Hospital until January 19th of 2016 -- or '17, excuse me, so roughly a four-month period, would that four-month period cause any type of possibility of his neurogenic bladder worsening?

A. In this case, no. If somebody were in florid

retention with a markedly distended bladder, you know, like two liters of urine for a month or two I think that would be different. But when he eventually went in and was catheterized at 600 CCs, that's really not -- I mean, it's obviously a very, very full bladder but it's not enough to cause any permanent damage.

Q. So would you agree then that from the time the belief that the neurogenic bladder started in September of 2016 to March of 2017 his neurogenic bladder condition did not worsen at all?

A. I -- again, it's -- you know, it's always hard to tell because we don't have objective data during those four months. For example, we don't have post-void residual urine determinations by sonography or attempted catheterizations, but I would say it's unlikely that there was a substantial change over four months. There was -- I mean, there was a problem there. It became more clinically apparent at that January visit.

Q. Okay. And when someone is diagnosed with a neurogenic bladder, is it safe to say it's irreversible?

A. No. I would say that depending upon the underlying cause, I think neurogenic bladders can vary over time. So, for example, somebody who has Parkinson's disease or multiple sclerosis you may see a waxing and waning of their symptoms. Somebody, on the other hand, who has a complete spinal cord injury is not likely to have any major change over time.

Q. How about with respect to this case where the claim is that it's an injury to the brain that's causing Mr. Raymond's neurogenic bladder, would that be reversible at all?

A. You know, it's really hard to say because now that he has undergone major reconstructive surgery and has an augmented bladder with a catheterizable stoma it's kind of impossible to know what the underlying bladder function is like. If -- you know, he did have an indwelling catheter for a very long time and he had the opportunity to void on multiple

occasions with voiding trials but really was unable to -- was unable to urinate on multiple occasions so at least during those several years there didn't seem to be a change.

Q. Okay. I guess I am more -- I am looking more at an isolated time immediately after the alleged assault. If he was indeed truly assaulted on September 14th of 2016 and that assault injured his brain causing a neurogenic bladder, is there anything that could have been done immediately after that incident to stop the neurogenic bladder from developing?

A. I don't believe so, no.

Q. I am going to scroll down. We're still on your expert report which is Exhibit 1. I am going to look for the portion I am interested in if you give me one moment.

The sentence reads: "In summary, Mr. Raymond was 28 years old with no prior urological history at the time of the assault of September 14th, 2016." Did I read that correctly?

A. Yes.

Q. Okay. From where did you get that information that he did not have a prior urological history?

A. Based on the records that I reviewed including some of the earlier records and the later records there was no evidence that he had any significant degree of voiding dysfunction prior to September of 2016.

Q. I am going to scroll down just briefly to Exhibit 2 which is the Department of Corrections record from the infirmary, and there is an entry from January 1st of 2016 so we are talking about nine months before the alleged assault. And there is a reference to -- and, again, this is just to clarify this does refer to Matthew Raymond, there is an entry of a straight cath due to inability to void. Do you see that?

A. Yes.

Q. Okay. Is it your understanding that that entry is referring to the use of a catheter because Mr. Raymond was unable to void his bladder?

A. It is -- I mean, it's an order. Looks like it, what is that 8:10 AM, is that what it says? It says "may straight cath due to the inability to void." So I don't recall if he required straight cath that one time. I don't remember -- I just don't recall exactly what this incident of December 31st of '15 and January 1st of '16, I don't recall what had happened here.

Q. Okay. But looking at this particular record, there does appear to be some reference to Mr. Raymond complaining on January 1st of 2016 of being unable to void his bladder, correct?

A. Right. Yeah, I am actually looking at the second page of the exhibit, it looks like he had just had a laparoscopic appendectomy; is that right?

Q. Are you looking at this page that I have on the screen?

A. Yes.

Q. Okay. Let me know when you're done reading.

A. Yeah, no, I am just looking at it. It looks like they were about ready to catheterize him.

So I suspect, and I don't recall if I had seen this before, that after surgery and having been anesthetized it's not uncommon to have a very brief period of difficulty urinating.

Q. And you made a reference to an appendectomy which Mr. Raymond's on record of claiming having been done. In your experience, have you ever seen the procedure of an appendectomy causing someone to suffer neurogenic bladder at a later time?

A. No. No. I think it's very common for post-op after surgery to have a very short period of time, you know, usually 24 hours of difficulty urinating because of the effect of the anesthesia in decreasing bladder function, but that's generally gone within 24 hours.

Q. Okay. I am going to go back up to your report, back to page 3. Now, I will highlight it for you.

There is a comment of Mr. Raymond had a urodynamic study in November of 2017 which was abnormal. What exactly is a urodynamic study?

A. Urodynamics or a urodynamic study involves

placing a catheter in the bladder, often with another catheter in the rectum, primarily to measure bladder pressure and function during filling and voiding, and it's considered the best test, albeit limited, of bladder function that we have.

Q. Okay. What was the purpose of doing that study on Mr. Raymond at that time?

A. The idea of during urodynamics is to try and get some insight into why -- why he was unable to urinate. And several different outcomes can be seen from a urodynamic study. One is, as in this case, the bladder just doesn't contract which we would call acontractility or areflexia. Another possibility would be that there is a physical blockage, for example, in an older guy from prostate enlargement or from sphincter non-relaxation. So urodynamics is indicated to get an idea of what -- you know, try and explain why someone can't urinate in this particular case.

Q. Okay. So this study was done after it was determined that it was not a urethral

stricture, correct?

A. That's exactly right.

Q. So at this time is it fair to say the study was done just in an attempt to identify the reason Mr. Raymond was suffering a neurogenic bladder?

A. Exactly.

Q. Okay. And you wrote that the study came back abnormal. Why did you write that?

A. Right. So a normal urodynamic study would involve noting when there was a first sensation, a first feeling of fullness, and then strong sensation of fullness and then in a normal urodynamic study, one would then generate a bladder contraction which would empty the bladder. Bladder pressures of a certain degree, you know, you don't want them too high or too low, but the idea would be that you would have normal sensation, normal contractility, and at the end of it you would have a bladder that was essentially empty.

And what made this urodynamic study abnormal is that the bladder didn't do

anything. He felt the sensation of fullness relatively early, I think it was 200 and something CCs, I'd have to look and see if I can find it there, but it was a relatively low volume but despite the fact that he had a strong urge to go, nothing happened and then they had to unclamp the suprapubic tube and terminate the study.

Q. So would it be fair to say that that study confirmed -- well, strike that.

Later on in that paragraph in your report you wrote, "while it is helpful to have abnormal imaging or an abnormal neurological examination to bolster the diagnosis of neurogenic bladder, there is no requirement for such evidence." Did I read that correctly?

A. Yes.

Q. Okay. Now, is that a reference to what we were talking about earlier that there is no imaging identifying the actual injury that caused the neurogenic bladder?

A. Exactly.

Q. Okay. Why do you write that there is no requirements for such evidence?

A. The reason I write that is that there are just plenty of cases we see clinically where somebody has a very real bladder dysfunction but imaging studies are not informative. Again, it's great if you can identify something on an imaging study. You know, we will certainly do that.

If somebody walks into the office with no good history, we may get a -- for example, an MRI of the lumbar spine to look for any evidence of a nerve problem in the lower spine. Once in a while we find something. Most of the time -- or I shouldn't say most but many times we don't. But meanwhile the patient does have a significant degree of bladder dysfunction but the imaging study just doesn't help us, that's all.

Q. In all instances where a person has a dysfunctioning bladder but there is no imaging to confirm the cause of that dysfunctioning bladder, is that neurogenic bladder always

caused by physical trauma to the person?

MS. ROSENFELD: Objection to the form. Go ahead. You can answer.

A. No, not necessarily. Like I said, it could be all sorts of other possibilities. I don't think they're relevant in this case but certainly.

Q. What other possible reasons could someone suffer a neurogenic bladder without imaging proving the cause of the dysfunction -- dysfunctioning bladder?

A. I mean, I will say as an example, somebody could be taking certain medications that affect bladder function, and tend to paralyze the bladder, that -- that would be one possibility. One could envision other scenarios where bladder function is abnormal that are nontraumatic.

Q. Okay. Could it be caused by someone who has repeated use of illicit drugs?

MS. ROSENFELD: Objection.

A. I have never -- I mean, I think if somebody acutely -- if somebody is taking, you know,

for example, a large amount of narcotics on a regular basis, one acutely can have some effect on bladder function but that's not something expected to last. And certainly once -- you know, patients who are taking, for example, Percocets or methadone long term we generally do not see bladder dysfunction like this with the possible exception of ketamine.

Q. What is that?

A. Ketamine is a -- I think it's like a horse tranquilizer or something that has -- that has been seen on occasion to cause some strange bladder dysfunction. It's very rare.

Q. Okay.

A. But in general, you know, somebody who smokes dope or somebody who does, you know, crack cocaine, I mean, we may see somebody with an acute issue when they're intoxicated, for example, in an emergency. But once the acute intoxication is gone, bladder returns to normal. It certainly wouldn't cause any sort of long-term issue.

Q. Now in his records, and I don't know if you

saw this or not, Mr. Raymond has admitted on several times to smoking marijuana, taking cocaine, taking heroin. Is it possible that his use of drugs, of those particular drugs, created the condition he has right now of the neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. Extremely unlikely. As I said, I mean, again people who are acutely intoxicated, I mean, even alcohol even more probably commonly than other, you know, quote-unquote illegal drugs or illicit drugs but they all -- we certainly see those periodically in the acute situation but not chronically, not to the point that somebody would end up undergoing a four-hour reconstructive surgery for a bladder that doesn't work.

Q. Okay. Have you ever read any type of articles or papers regarding individuals who suffered a permanent neurogenic bladder because of use of illicit drugs?

A. I have not.

Q. I want to scroll down a little further on

page -- to the bottom of page 3 of your report. I highlighted a sentence near the bottom. There is a reference in that sentence to brain lesion. Do you see that?

A. Yes.

Q. What do you mean by brain lesion?

A. So, again, this would be the more obvious central nervous system problem like a bleed in the brain or a brain tumor or multiple sclerosis where there is evidence of plaque in the brain. When one has what we call a supratentorial lesion like that, the classic textbook says that you're going to have an overactive bladder with urgency frequency and urge incontinence. That's what the classic textbook says that that's what you get with a -- you know, something that's demonstrable like that.

Q. Could a brain lesion lead to the inability to void your bladder?

A. Sure.

Q. Could a brain lesion lead to an individual developing a neurogenic bladder condition?

A. Yes.
Q. Now, does it have to be any particular type of lesion or it could be any type of lesion?
A. No, again, you know, when you can see things on MRIs or CAT scans, that's great but, you know, the brain is a pretty subtle organ and there is lot of, you know, what is it, trillions of connections with neurons and synapses and all the rest of it.

You know, for example, the current thinking is that the coordination of voiding is something that occurs at the level of the pons and so anything above the pons is going to give you that hyperreflexic situation, and something below the pons can give you something called dyssynergia. But at least in theory if some lesion were to effect the area around the pons, that would potentially cause urinary retention because of the lack of coordination there.

So, again, brains are, you know, very -- it's very difficult to predict unless it's something very obvious. Like I said, like a

tumor that's in one particular spot, you can pretty much guess what that's going to do based on where it is.

Q. Now a lesion that causes neurogenic bladder, does it have to be on the pons or located near the pons?

A. Absolutely not. Like I said, it could be anywhere, you know, anything above the pons, at the pons, below the pons. I mean, neurogenic bladder is a pretty broad term so it really is very, very broad and frankly nonspecific.

Q. Okay. So let me do this, let me scroll to Exhibit 3 of your deposition. This is a document from the Auburn Community Hospital Imaging Department. Do you recall if you reviewed this particular record when you prepared your report?

A. Honestly, it looks familiar but I can't say with any degree of certainty.

Q. Okay. So according to this record, there is a CT scan of Mr. Raymond's brain which I am highlighting the portion now which makes

reference to a small isodense lesion. Do you see that?

A. Yes.

Q. Okay. So that's referencing a lesion that was found on Mr. Raymond's brain, correct?

A. Yes.

Q. Okay. Now with a lesion like that, is it possible that that kind of a lesion could cause a neurogenic bladder?

MS. ROSENFELD: Objection to the form.

A. I mean, I am not -- unfortunately, I am not a radiologist. I am looking at this. It looks like it says it's within the frontal bone just superior to the ethmoidal air sinuses. So this looks like some sort of cystic thing in the bone itself, so I would say that's highly unlikely to be related to brain function at all.

Q. What do you mean by "cystic"?

A. What's that?

Q. What do you mean by "cystic"?

A. Well, it says -- well, you know what, did I say cystic? I don't know why that -- I am

looking at this, just looking -- I am reading it. It just says isodense well-circumscribed with a sclerotic border. Anyway, it looks to me like they're describing something in the bone as opposed to in the brain. So I think I don't know why -- if I said cystic, I misspoke but it looks like it's a benign bone lesion as opposed to a brain lesion.

Q. Okay.

A. Which is why at the bottom it says "no acute intercranial abnormality identified."

Q. Okay. So is it your opinion that because of the location of this particular lesion that it's unlikely to have caused Mr. Raymond's neurogenic bladder?

A. Correct.

MS. ROSENFELD: Objection.

A. Oh, and by the way, actually I may have -- I don't know where cystic came from but if you scroll to the next page, I almost anticipated this I guess where he says "the lesion in the right anterior frontal bone has benign appearances and may represent a dermoid or

epidermoid cyst."

Q. Okay. What exactly is a dermoid or epidermoid cyst?

A. It's benign, that's what it is, but I would defer to a neuroradiologist.

Q. Okay. Let's go back to your report.

Let's go to -- okay, yeah, we're on page 4. At one point you wrote "a more subtle injury could certainly become clinically apparent over a longer period of time." Do you see that portion?

A. Yes.

Q. And what --

MS. ROSENFELD: Sorry, I am just trying to find it on my copy. One second.

MR. MACKEY: Okay.

MS. ROSENFELD: Okay. Go ahead. Sorry, Counselor.

MR. MACKEY: I do have it highlighted on the screen if you look at that.

MS. ROSENFELD: For some reason I can't see it on the screen. My eyes are not good so I am just looking at the copy you sent me.

MR. MACKEY: Okay. So did you find it?

MS. ROSENFELD: Mhmm.

BY MR. MACKEY:

Q. What did you mean when you wrote that?

A. Meaning that when we see patients with voiding problems they may be able to compensate at first. I mean, other than his seizure and his prior brain injury, he is a relatively healthy guy. He is a young guy, doesn't have a big prostate. So if he were to have a problem urinating, it wouldn't be all or nothing. You know, if this were a 65-year-old guy, he might have developed retention immediately just because the effect on his bladder function would have been much more obvious in the presence of a pre-existing prostate problem.

I don't know if that's a good example but, you know, somebody like this could have a problem which just wasn't really clinically apparent. It might have manifested as some urgency, some frequency, some symptom that just ended up he could compensate for it until he couldn't compensate for it. And then at

four months he ends up going in with obvious retention. So it may have been if we had done a sonogram at six weeks out we would have seen that his bladder was not emptying and that there was already a problem. It just wasn't clinically apparent to him at that point.

Q. Okay. So could that explain why there may have been a four-month period between September 14th, 2016, date of the alleged assault and Mr. Raymond's first visit to Upstate University Hospital in January of 2017?

MS. ROSENFELD: Objection to the form.

A. Yeah, I mean, I think that's a reasonable -- I mean, it could be -- I mean, I don't know what the politics are in terms of going to the infirmary and when they -- you know, when they send you back to your cell versus when they decide to send you off to an emergency room so, you know, that certainly goes into it.

It could also have been that he was not -- like I said, that he wasn't even aware of it as much but once his bladder got

decompressed in January of 2017 then sort of the die was cast as it were, and at that point once they tried to, you know, clamp the catheter or take it out, he failed voiding trials so we certainly see that.

I think this would be a terrible analogy but somebody who has lung cancer and they say, oh my God, you have two months to live, you know, you know the lung cancer didn't just show up. It was there for six months earlier. It's just that somebody was unaware of it. So I think that's something that we see in voiding dysfunction is that things can be -- it's not all or none.

Q. Okay. So just so I understand what you're saying, in this case, Mr. Raymond is claiming that strikes to his head -- blows to his head and neck and face resulted in injury that caused a neurogenic bladder. Are you saying that even though they -- those particular strikes to the head may have caused neurogenic bladder the actual symptoms may not have occurred until later on?

A. Well, correct, that the full fledged symptom of inability to urinate may not have been present from the get-go, like on the day of, and so that is exactly what I am saying.

Q. Okay. Isn't it common though if someone injures their head, their brain, their neck or their spine for them to have a rather immediate -- let me rephrase that.

Is it common for individuals who suffer a fractured spine or a fracture in their neck or a severe head trauma to suffer neurogenic bladder soon after the actual event?

A. I would agree with that. I would say something that's, you know, again, much more obvious, like a full spinal cord injury or cracked skull with a big brain bleed, yes, that's something where you're more likely to see something that's -- you know, that is clinically apparent earlier as opposed to a delay but this is obviously a much more subtle type of injury.

Q. So is it fair to say that the delay we're seeing here is kind of a rare occurrence?

MS. ROSENFELD: Objection to the form.

A. I wouldn't -- what I would say is that it certainly is consistent with an injury that is not as clinically obvious. You know, it's -- it makes life a lot easier when you have got something obvious like on an imaging study. You know, a broken bone is something that's very obvious or a subdural hematoma or an epidural hematoma. Those are -- that makes the diagnosis much clearer much earlier but, unfortunately, in medicine we see a lot of things that are not so obvious.

Q. Now, you mentioned earlier I think that you do have some patients that suffer seizures. Are you familiar with any patients or of any situation where an individual suffered an injury to their head, neck, or spine during a seizure and that resulted in neurogenic bladder?

A. I have not seen that.

Q. Is that possible, that someone during a seizure could suffer an injury to their head, neck, or spine resulting in a neurogenic

bladder?

MS. ROSENFELD: Objection.

A. I mean, it's -- of course it's possible.

Q. Okay. I am nearing the end of your report. So the second to last paragraph you wrote a sentence reading "his damages are permanent and causally related to the assault of September 14th, 2016." Do you see that?

A. Yes.

Q. Okay. When you say Mr. Raymond's damages are permanent, are you saying that his neurogenic bladder will stay with him the remainder of his life?

A. Yes.

Q. Okay. And what type of difficulties, if any, will Mr. Raymond incur because of the neurogenic bladder?

A. Well, you know, he underwent major reconstructive surgery that was successful. Obviously there were some, you know, temporary complications afterwards like a seroma and then he had a hernia and all the rest of it but, you know, assuming that that stuff is all

behind him, you know, he will continue to self-catheterize since an augmented bladder doesn't contract on its own.

He will need to be monitored. I have plenty of patients who have done augmentation cystoplasty that I see typically once a year. The vast majority of them do well. They don't get frequent infections, and they don't have trouble catheterizing. But since there is the mechanical aspect of putting a catheter through that abdominal stoma into the bladder, you know, there is a risk of trauma. There is a risk of having to have a -- you know, some surgery to revise the catheterizable stoma.

As far as I know, I guess it's been, what, over a year now. I am not aware that he has had any trouble with it, but he certainly needs to be monitored for UTI and for trauma. I suspect kidney function will be okay though.

Q. And why do you say that about kidney function?

A. You know, as long as he is able to regularly catheterize and empty his bladder, his augmented bladder should be large capacity,

low pressure. So even though the rest of us urinate on our own and he has to catheterize instead, his kidney function should be preserved. So I am not -- I mean, it has to be monitored but I don't expect he will have a problem in that area.

Q. On your review of Mr. Raymond's records, do you see any indication of problems with his kidneys?

A. No. Before he underwent the surgery when he had an indwelling suprapubic tube he had multiple admissions for what appeared to be pyelonephritis. They were somewhat confusing admissions but I don't believe he has had that problem now that he has a large capacity, presumably low pressure bladder that's been augmented.

Q. And upon your review of Mr. Raymond's medical records, do you see any indication that his condition of having a neurogenic bladder is causing any detrimental issues to any other parts of his body?

A. Not that I am aware of, other than the fact

that he developed that incisional hernia with all of its, you know, multiple surgeries but I am hopeful that after his last abdominal wall reconstruction he should be -- hopefully will be okay.

Q. Now individuals who are in the condition that Mr. Raymond is in, are they able to have sex?

A. They should be, yes.

Q. Okay. Are they able to have children?

A. He should be, yes.

Q. Okay. Are they able to work, have a job?

A. He should be, as long as, you know, if he -- the fact is if his -- again, I haven't seen recent records but if his augmented bladder holds the equivalent of four or five hours worth of urine output, you know, he should be able to go into a bathroom, catheterize himself into a toilet and then go about his business. So I think that that's -- you know, it's a little more involved than what the rest of us go through but, you know, he is otherwise a young guy and should be able to do that.

Q. Okay. Are individuals in Mr. Raymond's condition, are they able to have hard labor jobs, jobs that are, you know, not necessarily office related jobs but jobs that may be construction or hard physical labor?

A. I mean, I would say as far as urologically, yes. I don't want to speak in terms of exactly how his abdominal wall is doing. If his abdominal wall, after the other surgeries he has had, if that is now fixed, then I would say most likely he should be able to do that but I don't know -- I don't know exactly how -- you know, how his abdominal wall is doing at the present.

Q. Okay. And people in Mr. Raymond's current condition, are they able to participate in physical activities, jobs, play sports, play a game of basketball, things like that?

A. I mean, again, you know, subject to how his abdominal wall is doing, the answer is yes.

Q. Let's take a look, this one is marked Exhibit 7 for today's deposition. It is a report from Upstate University Health System. It looks

like the date is March 7th of 2017 and it's related to Mr. Raymond. Do you have that on your screen, Dr. Vapnek?

A. Yeah, it's a little small.

Q. I can make it bigger for you.

A. Oh, you know what, I can actually get it on my computer screen.

Q. I enlarged it, I don't know if that helps you.

A. Yeah, I got it. Yep.

Q. Okay. I am highlighting one line. It makes a reference to Mr. Raymond having a past surgical history that includes appendectomy and hydrocelectomy. I think we talked about the appendectomy earlier.

A. Yes.

Q. What's a hydrocelectomy?

A. Hydrocele is a fluid-filled structure that surrounds the testicle and is typically -- it's a benign condition but that can be repaired surgically.

Q. Okay. And when you say "benign," you're referencing it to be a harmless condition?

A. Yeah, I mean, it can be pretty dramatic and

annoying if it's the size of a melon but, you know, generally once it's repaired usually you go back to having a pretty normal scrotum.

Q. Okay. Now, having that type of procedure, hydrocelectomy, could a side effect of having that type of surgery be a resulting neurogenic bladder?

A. No. The scrotum -- scrotal surgery is not going to affect bladder function at all.

Q. Okay. We're still on Exhibit 7 so we're just on the next page of Exhibit 7 which I scrolled down to. I am going to highlight two lines here.

Now there is reference to "no stricture seen on cystoscopy." Do you see that?

A. Right.

Q. We talked about that earlier that it was determined that he had no stricture, right?

A. Right.

Q. Okay. It does make reference "symptoms possibly due to BPH or voiding dysfunction." What is BPH?

A. BPH stands for benign prostatic hyperplasia

which is a common condition of prostate enlargement in the aging male, not something we see in guys under 30 but obviously this was a continuation of what we would call the differential diagnosis now that stricture had been stricken from the list by the negative cystoscopy and negative VCUG that had been done prior to this.

Q. And did you see anything in Mr. Raymond's records indicating BPH?

A. No. You know, we could always go back and look at the cystoscopy note, but usually -- I shouldn't say usually. Every time we do cystoscopy in a male we're putting the scope through the urethra, through the prostatic urethra into the bladder so we generally comment on what the prostate looks like and it would be extremely unusual and certainly wasn't noted in this case that he had BPH.

Q. Let me go to Exhibit 9 of this deposition. If you take a look at the document on the screen, right at the bottom it's labeled as Exhibit 9. It's a report from Erie County Medical Center

Corporation. It looks like it has a date of August 26th of 2018 and, again, it's related to Matthew Raymond.

Going down a little bit, there is a reference to the history of the present illness and initial comments. Here it appears that Mr. Raymond informed the medical staff that the neurogenic bladder is from a 2016 fracture of an L4 vertebra of his back. Do you see that?

A. Yes.

Q. Do you find that comment to be accurate at all?

A. Not that I'm aware of. I don't think that that was my understanding of any of the imaging studies. I am not sure if somebody had told him that. I don't know where that comes from.

Q. Okay. So do you disagree that there was an L4 -- a fracture of his L4 vertebra causing the neurogenic bladder?

A. Yeah, I am not aware of that.

Q. Okay. L4 vertebra is kind of the lower back,

correct?

A. Correct.

Q. Okay. Did you see anything in Mr. Raymond's records making a reference to a fracture of his L4 vertebra?

A. No.

MS. ROSENFELD: Objection. Asked and answered.

Q. Let's go to Exhibit 10. Exhibit 10 is another document from Erie County Medical Center Corporation relating to Matthew Raymond and this one has a date of January 28th of 2019.

In this particular history Mr. Raymond made reference to a spinal cord injury from a motor vehicle accident 15 years ago. Would it be possible that an injury 15 years ago to a spinal cord could result in a neurogenic bladder in 2016?

MS. ROSENFELD: Objection to the form.

A. Highly, highly unlikely.

Q. Okay. Earlier you were mentioning that it is possible in younger individuals that the symptoms of a neurogenic bladder may not be so

obvious at first and then might take some time to -- for it to become obvious. Could that be the case with this, that a spinal cord injury from 15 years ago resulted in a neurogenic bladder?

A. I mean, it's extremely unlikely. I mean, it's essentially zero. I mean, this is so -- you know, a 15-year-ago spinal cord injury and the traumatic brain injury that was seven years earlier, I think those are just, you know -- just I would say the likelihood is pretty close to zero.

Q. Have you ever encountered something similar to that, a long period like that where a patient developed a neurogenic bladder years after a spinal cord injury?

A. No.

Q. Scrolling down, this is Exhibit 11. Again, it's related to Matthew Raymond and this has a date of September 21st of 2020, and this is from the Western New York Urology Associates.

Now in this particular document there is a reference to Mr. Raymond has a history of a

C2 spinal cord injury with traumatic brain injury in 2016 from an assault. Do you see that?

A. Yes.

Q. Okay. Now we were talking earlier about the lack of any type of imaging evidencing the injury that Mr. Raymond experienced. Did you see any imaging in the records you reviewed that show a C2 spinal cord injury?

A. I did not.

Q. Okay. Do you have any idea where this reference to a C2 spinal cord injury is coming from?

A. No, I mean, I don't. All I can say, again, in a general term is that, you know, if we see a patient for the first time without the -- without having hundreds of pages or thousands of pages of old records we -- you know, we take a history and, you know, sort of do the best that we can. So we don't necessarily know. Sometimes patients can be misinformed or just confused as to what kind of conditions they might have.

Q. Is it all right if we take a five-minute break?

A. You bet.

(A recess was taken.)

BY MR. MACKEY:

Q. Dr. Vapnek, one thing we didn't talk about was about the van trip that Mr. Raymond had from Auburn Community Hospital to the Auburn Correctional Facility on September 14th, 2016. In your review of Mr. Raymond's records, did you see any reference to a seizure he had during that particular van trip?

A. I don't recall.

Q. Okay. There are some records which make reference to Mr. Raymond suffering a seizure on September 14th of 2016, when he was returning from the local hospital to the Auburn Correctional Facility, and there is statements that he suffered injuries at that time. Is it possible that if he suffered injuries during that particular seizure that that could have caused him to injure his

brain?

A. I mean, it's --

MS. ROSENFELD: Objection to the form. Go ahead.

A. I mean, it's certainly a possibility. I think it's less likely than in an assault but, again, I wasn't there.

Q. Understood. Why do you feel less likely than an assault?

A. I mean, just from what I have seen in this -- in assaults in my limited experience.

Q. Okay. I am sorry, maybe I misheard your answer.

A. Just from what I -- again, it's not something that we -- that urologists see on a regular basis, but I have certainly, you know, had to see head trauma to the point of -- you know, from seizure activity. You know, major head trauma is not something that -- I certainly haven't seen it.

Q. Well, let me ask you this, obviously you have a lot of patients with the condition of a neurogenic bladder: Have you ever had any

patients who suffered a neurogenic bladder as a result of brain injury caused by being hit by fists or being beaten by another human?

A. Yes, yeah. I mean, again, it's not super common. I have one patient in particular who was, from what I recall, a police officer who was badly beaten and ended up retiring from the force after that but he has had persistent issues ever since.

Q. And this is a patient with a neurogenic bladder?

A. Yeah.

Q. Okay. And -- well, strike that.

There were some photos taken of Mr. Raymond later that day on September 14th, 2016, at the correctional facility. There is a few of them of him standing up, a few of them closer in to his face. Did you have a chance to look at those photos during your review of his records?

A. No.

Q. Okay. Now, you said that someone suffering a brain injury resulting in a neurogenic bladder

that it's not as common for someone to suffer that if -- from a beating from another person. Why do you say that?

MS. ROSENFELD: Objection to the form. You can answer, if you understand the question.

A. I mean, again, just in my relatively limited experience, I mean, this is certainly not a large part of the practice by any means.

Q. Okay. Is it more common for individuals with neurogenic bladder that they suffered either neck, brain, or spine injury in a much more forceful manner like a motor vehicle accident or a fall from a high -- high place?

A. Those are certainly more common, certainly. I mean, again, it's very -- it's always difficult to predict exactly how -- you know, how a brain is going to react to trauma and who is going to end up with a problem and who is not.

MR. MACKEY: I don't think I have any further questions. Are you all set, Katie?

MS. ROSENFELD: Yes, I am all set.

Thank you so much, Dr. Vapnek. Thank you to the court reporter.

THE WITNESS: You're welcome.

MR. MACKEY: Thank you, Dr. Vapnek. Thank you for your time. We are all done here.

(Deposition concluded at 3:54 p.m.)

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STATE OF NEW YORK)

COUNTY OF ERIE)

I, Carrie A. Fisher, Notary Public, in and for the County of Erie, State of New York, do hereby certify:

That the witness whose testimony appears hereinbefore was, before the commencement of their testimony, duly sworn to testify the truth, the whole truth and nothing but the truth; that said testimony was taken remotely pursuant to notice at the time and place as herein set forth; that said testimony was taken down by me and thereafter transcribed into typewriting, and I hereby certify the foregoing testimony is a full, true and correct transcription of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action, nor in anyway interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 31st day of March, 2022.

Carrie A. Fisher
Notary Public - State of New York
No. 01FI6240227
Qualified in Erie County
My commission expires 5/02/23

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